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ABSTRACT

Rufus Choate, a Massachusetts lawyer and orator, has been described as a "unique and romantic phenomenon" in America's history. Born in 1799 in Essex, Massachusetts, Choate graduated from Dartmouth College and attended Harvard Law School. Choate's goal was to be the top in his profession. Daniel Webster was Choate's hero. Choate became well respected as a criminal lawyer, and was especially effective in front of juries. Although successful with juries, Choate frequently lost cases before Supreme Judicial Court Judges, who were not swayed by his style. Choate appeared in many important cases before the Supreme Court. Associated with Webster, he argued "Rhode Island v. Massachusetts" (a boundary line dispute), "Thurlow v. Massachusetts" (nullification of liquor laws), "Norris v. Boston" (immigration laws), and "Woodbury v. Allen" (patent disclaimer). Choate was a master of rhetoric, and studied Demosthenes, Quintillian, and Burke. Much of Choate's success came from his intense and careful preparations. He also combined wit with a sense of courtesy and appreciation in meeting his competition. Choate had a unique personality which made him a great orator. Some historians feel that Choate should be placed among the great lawyers of all time. (MM)

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RUFUS CHOATE: A UNIQUE ORATOR

Almost seventy years after his death the 1930 Commonwealth History of Massachusetts stated that Rufus Choate was "the Massachusetts lawyer who still attracts more interest than any other, with the exception of Webster." Choate was described as "a unique and romantic phenomenon" in America's history.[1] In the following analysis I will present a brief background of Choate's life, discuss Choate and the law, and conclude with some observations about his speaking style.

BACKGROUND

Rufus Choate was born October 1, 1799 in Essex, Massachusetts. Rufus developed a deep interest in reading books in his youth. Before the age of six he could quote passages from the Bible and had read Pilgrim's Progress (adventure story of Puritan New England). Rufus entered a small private school at the age of eleven and was sent to a succession of different schools directed by the local clergy.[2]

Rufus entered the Hampton Academy in New Hampshire in 1815. After several months of study he transferred to Dartmouth College (age 16) as an undergraduate. Rufus was in Dartmouth at the height of its controversy with the New Hampshire Legislature. Choate spent his time wisely at the college. He studied long hours and his mind worked rapidly. Rufus developed a love for classical literature and became well versed in Latin and Greek.[3]

Choate developed early an ability to speak from the platform. He was assigned to membership in a debating society, where he played a major role in its exercises. Choate disliked physical exercise but soon developed

a regular exercise program due to poor health. During his senior year Choate became seriously ill with a form of neurasthemia. Although he had been absent from several classes due to the illness, Rufus was named Valedictorian.[4]

On the morning of commencement exercises many classmates were worried about whether Choate would be able to deliver the closing address. His chair was empty when the commencement began, but when Choate's name was called, a ghostlike figure walked from a side door to the podium. Emaciated and trembling, Rufus delivered his speech. Choate dazzled the audience with his address. At the close of his speech the trustees and audience (including Daniel Webster) were in tears, swept away by his emotional words.[5]

Daniel Webster was Rufus Choate's hero. Choate wrote that he desired to become a college professor. But his attitude changed when he observed Webster during the famous Dartmouth College Case. In March 1818, Webster appealed to John Marshall and the other members of the U.S. Supreme Court that the Massachusetts State Legislature could not alter the binding force of the Dartmouth Charter. Webster's appeal was successful in keeping the Massachusetts Legislature from turning the college over to state interests.[6]

Choate admired Webster and supported him through financial crisis and national issues of the day. It is interesting to note that Choate paid a funeral tribute to Webster in the same church where Webster had listened to him in 1819.[7]

Choate worked as a tutor following graduation and slowly recovered from his serious illness. Choate found teaching rather tame and busily prepared for entrance into law school. In the fall of 1820, Rufus Choate entered the newly established Harvard Law School. At that time the law school curriculum was not taken seriously by either students or faculty. The professors would guide the students through a series of readings and informal lectures. Students gained experience in arguing cases with a moot court program. The school was graduating nine men a year.[8]

Choate made the most of his studies. Edward Everett, a member of the Harvard faculty said of Choate, "When he was at the law school in Cambridge, I was accustomed to meet him more frequently than any other person of his standing in the alcoves of the library of the university." Choate gained knowledge from observing trial of cases in Boston. He learned that his profession required a knowledge of both legal treatises and men.[9]

Rufus's brother-in-law secured an internship for him in the Office of President Monroe's Attorney General, William Wirt. Wirt was of little assistance to Choate due to a serious illness. But Choate was about to hear other successful advocates including, David B. Ogden, of New York, Littleton W. Tazewell, of Virginia, George Blake, George Sullivan, and Daniel Webster from Massachusetts appear before Marshall's Supreme Court.[10]

Choate was in court when William Pinkney, of Maryland, leader of the American Bar had been speaking for three days in the case of Richard v. Williams when he was struck down by apoplexy and died a few weeks later. Tired of Washington and beset by a family tragedy, Choate returned to Essex.

He worked a short time for a local law firm and then spent several months under the caustic Judge Cummins, in Salem. Choate was admitted to the Court of Common Pleas in September, 1823 (at the age of 24). [11]

CHOATE AND THE LAW

Choate's goal was to be the top in his profession. He loved the practice of law, even though he spent some time in governmental service and ceremonial speaking. In his early cases at Essex he revealed a genius that would later astound the Supreme Court.

Choate opened a private law practice in Salem, but after receiving no business for twenty-four hours he traveled to Peabody. He decided to open law practice in Peabody because there were no other law firms in the town. Choate gladly accepted any case, no matter how insignificant. Choate would prepare cases with meticulous care. This policy is illustrated by the "dog case tried at Beverly, in which it was reported he treated the dog as though he were a lion or an elephant, and the crabbed old squire with the compliment and consideration of a chief justice." [12]

In 1825, Choate moved his practice to Hanover where he married Helen Olcott. As his reputation spread he gained more clients and was admitted in November, 1825 as an attorney in the Supreme Court. Choate worked tirelessly on several cases. He was always restless, with untiring strength. But his strength was often offset by illness and misery. [13]

Choate took a case for "Ammi Smith, who alleged, had obstructed the highway with three cords of wood, so that John C. Cooper, driving a

load of cider barrels to Salem, hit the pile, with the result that an empty barrel fell on his mare and lamed her." Choate obtained a verdict for the defense with a fee of $3.98. Choate was obviously careless about fees.[14]

Choate became well respected as a criminal lawyer. Choate defended a group of young men who were charged with inciting a riot at a dance hall in Boston. Speaking to an overflow audience in a South Danvers courtroom, Choate made a small issue into a significant one and the clients were acquitted.

Choate was especially effective in front of juries. He had the ability to convince and persuade, emphasize major issues, marshall evidence, and weaken his opposition. Even in the most convincing cases Choate was successful. A Danvers man named Jefferds had been indicted for stealing a flock of turkeys. The proof of guilt in the case was overwhelming, yet one juror was struck by Choate's argumentation in defense of Jefferds. The case became a local cause celebre and at each successive court people would ask "When are the turkeys coming up again?"[15]

Choate would spend all night on a case and work with a stream of energy that left him strained and physically aching at the end of the day. Let's turn to an example of a typical day: "During the trial Mr. Choate became unwell, and was obliged to go to his hotel, while a portion of the argument of Mr. Lord was made. He requested me to write down every word Mr. Lord said, and bring it to him. I did so, and, at the same time, found Mr. Choate sick in bed, with a physician in attendance, who was prescribing calomel, and asked Mr. Choate how large a dose he was accustomed to take. Choate replied that

he did not know, but said, "Give me the largest dose you ever gave a man in your life." [16]

"The next day he rose from his sick bed, came into court, and began the grand argument which he made in the case, which lasted during the entire day, and nearly all the following day. While he was speaking, the perspiration, like raindrops, fell from his bushy hair all over the paper on which I was writing. Taking it altogether, that was the greatest speech I ever heard. Some of the tones of his voice were more than arguments of themselves. His classical allusions, his eloquent flights, his magnificent argument and beautiful illustrations, combined to entrance the court and auditors." [17]

Choate was a striking figure- six foot, brown complexion, curly hair, and dark eyes. Although extremely successful with juries, Choate frequently lost cases before Supreme Judicial Court Judges who were not swayed by his style. After serving two terms in the U.S. Congress Choate formed a partnership with Benjamin F. Crowninshield. Choate's philosophy was well described when he stated, "It is well enough for an American, at some portion of his life, to go into Congress for a brief time, if opportunity offers, as a sort of recreation and for pleasurable observation; but the great aim of a young man should be advocacy." Choate also felt that individuals who spend all their time with the law are narrow minded. [18]

We live in an age of specialization. Choate was well versed in every area of the law. He was the defendant in cases of divorce, embezzlement, assault, arson, and murder; he was always ready to appear in any court, from a Justice of the Peace to a Supreme Court Judge; he represented a wide variety

of clients, from the lowest to the highest. "He defended a Catholic priest against a charge of criminal assault; he conducted a case for Iasigi, a Greek, against a defendant who had induced the foreigner to sell goods on credit to an insolvent pruchaser; and he represented one of the litigants in a quarrel between two branches of a great Christian Church." [19]

Choate appeared in many important cases before the Supreme Court. Associated with Webster he argued the Rhode Island v. Massachusetts case, "the former state having brought a bill in equity complaining that an error had been made in the original boudary lines between the two states. Choate argued the Thurlow v. Massachusetts case (nullification of liquor laws), Norris v. Boston (immigration laws), Woodbury v. Allen (patent disclaimer). Nielsen states that there are 333 causes in which Choate was counsel and argued questions of law and equity which had been printed in the State and Federal Reports. [20]

CHOATE AND SPEAKING STYLE

Webster observed, "There is no man in the world except Choate who could succeed with that style. It is his own. It is peculiar to him. It is as natural to him as any constitutional trait about him. Nobody can imitate him. He imitates nobody, and his style is most effective." [21] According to Black there is good reason to view Choate's language as unusual. "Based on published manuscripts of four representative speeches, the mean length of a Choate sentence is 37 words. In a typical forensic pleading he used as many sentences that exceeded 80 words as ones with fewer than ten

words- in either instance, about seven percent. These are difficult lengths to match, even as an academic exercise. Thus, an assumption that underlay the study reported here was that Rufus Choate's sequences of words comprising sentences are highly individual." [22]

Choate desired to be a master of rhetoric. He studied Demosthenes, Quintillian, and Burke. Choate systematically studied ancient and modern rhetoric. Despite a busy schedule, Choate would spend an hour or two each day in the study of Cicero and Burke. "He set himself the task of going through the oration of Demosthenes, On the Crown which he would completely master, translate, annotate, and commit." [23]

Although we have no phonograph recording of Choate's public speaking we know he was highly persuasive. "Something of an actor he must have been, and most of what he did- his smiles, his asides, his apparently careless gestures, was done consciously, for the effect it would produce on the jury." Choate would not give the jury the impression he was about to attack them. He would begin his speeches in a conversational manner. He would compliment the jury, appealing to their pride. Occasionally Choate would personalize his statements. For example, he would say "You see, gentlemen, just how it was." Once he had gained the audience attention he would subtly shift into the argumentation. [24]

Choate would dominate the scene when speaking. He would shift from judge to jury to audience, or vice-versa, watching closely the facial responses. Choate was careful to structure his argumentation to meet his ends. He attempted to describe his arguments in such a way that the simplest mind could

understand.

"Choate would canvass his memory for literary allusions and parallels which he could cite in his speech to the jury. One reason why he used much of this type of material was to help clarify his points. But another reason was to supply periodically light, frolicsome, or irrelevant resting places for the minds of the jurors from time to time. It was one of his convictions that no mind can give its fixed attention to a matter for more than an hour at a time."[25] Many believed that Choate could convince people that Siamese twins did not look alike.

Much of Choate's success came from his intense and careful preparations. "For every case he took up he made detailed studies of the facts of the law, often filling several hundred pages with notes in preparation for a single case. In his study he read standing up, often all night long, always with a pen in hand to mark the margins or to take notes. No other great orator has equalled his frenzy of unleased energy. Yet he gave time patiently to clients and friends."[26]

Let's turn to an example of the Choate case preparation: "Choate would outline the approach he would use, which varied little from case to case. He would stress the importance of the case; draw a favorable character sketch of his client; show that the plaintiff was wrong, either inadvertently or by design; then conclude that his client was suffering from an ill-treatment which the jury could and should redress. After his opening exposition, Choate would examine the evidence with two aims: first, to select out of the mass the irreducibly essential considerations; and second, to interpret the facts in terms of probabilities."[27]

"His aim was to admit as much as possible, often to the extent that he would turn in court upon his own peripheral aspects of the case. For example, when he defended Helen Dalton against a charge of adultery, he chastised her severely for her habit of engaging in unwise and frivolous flirtations. When he defended Albert Tirrell against a charge of murder, he berated Tirrell soundly for profligacy and adultery. But from this abuse, he would turn to the jury and point out that his client was not on trial for these admitted misdeeds; the charge was something else, and of this his client was innocent." [28]

"Typically he developed the claim of innocence in terms of a pattern of probabilities. Granted the accused was the kind of person he appeared to be, and considering the circumstances, wasn't it highly unlikely that he would or could have committed the crime? Finally, he carefully and emphatically reminded the jury that the burden of proof rested fully upon the prosecution. The accused is innocent unless proven guilty beyond a shadow of a doubt." [29]

Choate combined wit with a sense of courtesy and appreciation in meeting his competition. Choate had a unique set of gestures and bodily movement while speaking. "Sometimes if he felt his energy flagging, he would give two or three convulsive jerks of his whole body . . . bow to the floor and straighten himself up again . . . rise on his heels . . . throw his head back and draw in his breath through his nostrils with a noise which could be heard all over the room." [30]

Choate's voice was always controlled, musical, and reassuring. In cross examination he was fair and considerate, yet rarely outwitted. Choate would never prolong his legal discussions and enliven juries with unusual

illustrations and anecdotes. Choate would use variety in tone.

Choate's mouth was large and his voice had enough volume to fill most halls. Choate would practice intonation and expression on a daily basis. Reading aloud from Burke he would "flexibly express all the changes of pitch and time appropriate to the fluctuations of the thought, making his tones strong and full." [31]

Choate felt that good public speaking demanded practice. He would also often pose in front of a mirror to make sure he was not doing anything unappropriate. Choate would often talk directly to someone in the audience, with a piercing glance. Choate's advice to the young lawyer is to "Soak your mind with Cicero." [32]

Choate strived for perfection in diction. He had an extremely large vocabulary. Choate felt that words reveal thoughts. Observers of Choate appreciated his lack of verbosity. ". . .the least verbose of the impassioned orators . . . His vocabulary is highly Latinized, and he enjoyed pronouncing a sonorous and unusual phrase." [33]

But sometimes Choate was guilty of using flowery words and extensive imagery. But some critics admired his talents in this area. "Parker lauded Choate's narrative abilities his intensity, his making everything look vague, deep-shadowed, and outlined with the lofty symmetry of towers and gates of castellated structures." [34]

In summary, Bortwell said the following about Choate, "the effect of his personal appearance, gestures, and electrical voice can never be comprehended by those who had not the fortune to see and to hear him." [35]

Choate had a unique personality which made him a great orator. Some historians feel that Rufus Choate should be placed among the great lawyers of all time. One historian described Choate even more plainly: "He was, Sir, in two words, a unique creation."[36]

ENDNOTES

1. Matthews, Jean V., Rufus Choate: The Law and the Civic Virtue, Temple University Press: Philadelphia, 1980, p. 3.

2. Fuess, Claude M., Rufus Choate: The Wizard of the Law, Milton, Balch & Company: New York, 1928, p. 22.

3. Fuess, p. 28.

4. Fuess, p. 37.

5. Fuess, p. 37.

6. Fuess, p. 39.

7. Fuess, p. 40.

8. Fuess, p. 43.

9. Fuess, p. 44.

10. Fuess, p. 44.

11. Fuess, p. 47.

12. Fuess, p. 50.

13. Fuess, p. 50.

14. Fuess, p. 52.

15. Fuess, p. 56.

16. Oliver, Robert T., History of Public Speaking in America, Allyn and Bacon, Inc.: Boston, 1974, p. 410.

17. Oliver, p. 410.

18. Fuess, p. 123.

19. Fuess, p. 140.

20. Fuess, p. 170.

21. Black, John W., Predictability as Related to Style", Speech Monographs, June, 1973, p. 101.